

Town of Union PLAN COMMISSION MEETING Minutes of July 29, 2010

The Town of Union Plan Commission regular meeting was called to order at 7:00 p.m. on Thursday, July 29, 2010 at the Eager Free Public Library, 39 W. Main St., Evansville, WI by Chairman Alvin Francis. Members in attendance included Chairman Francis, Vice Chairman Doug Zweizig, Renee Exum, Eric Larsen, Dave Pestor, and Doug Lee. Town Chairman Kendall Schneider, Supervisors George Franklin and Don Krajeck, Clerk Regina Ylvisaker, Building Inspector Bob Fahey, and Town Attorney Matt Dregne were also in attendance. Kim Gruebling was absent.

Approve June 24, 2010 Plan Commission Minutes

Renee Exum requested that the statement "Exum referred Moore to NR 415.04 Wis. Admin Code which contains regulations for the prevention of fugitive dust" be added to the last paragraph of page two.

Motion to approve as amended made by Dave Pestor. Second by Eric Larsen.

Public Comment (10 minutes max/issue)

Marie Messinger, Bullard Rd. is the manager of the new Farmers Market in Evansville. It will begin Tuesday, August 10 and will run from 3-8 pm. A kickoff event will be held on Saturday, August 7 at the corner of Main Street and Highway 14. They are looking for additional vendors for the market.

Eric Larsen commented on the one year moratorium on land divisions and subdivisions passed by Evansville which will affect the portion of the Town which lies in the City's extraterritorial jurisdiction.

Public Hearing: Review and recommendation to Board action on request made by Tom Davis, 10608 N. East Union Rd, Evansville, WI 53536 to separate off 8 acres including existing residence from the existing 43.89 acre parcel located at 10608 N. East Union Rd. in the SE ¼ of section 1, NE ¼ of Section 12, parcel #6-20-94.001. The existing 43.89 acre parcel is zoned A1; the proposed 8 acre parcel would be rezoned A3, and the parent parcel would retain A1 zoning.

Public hearing opened at 7:08 p.m.

Peter Conrad, Axley Brynleson, was in attendance representing the Davis'. Conrad explained the request, stating that the idea is the lodge building could be converted into a residence. The reason for the 35 acre parcel is to maintain A1 zoning. The applicants don't want to give the impression that there will be further division of the land, and they are willing to agree to a deed restriction limiting the property to the building (lodge) that is on it now and no further development. The land is not useable ag land, the buildings already exist, and the division is really not changing character of neighborhood or impacting it in any way. There is flood land and wetland on the property but they would not be disturbed by this division. If the applicants need to establish a "footprint" of existing development/buildings to be sure they stay away from

flood plain, wetlands, creek, etc they would be agreeable to that. Conrad feels the request is compatible with the Town's Comprehensive Plan, particularly the land use and ag sections.

Alvin Francis asked if there are separate utilities for the main residence and the lodge; Tom Davis stated that the utilities are separate and each building has its own electric meter. Additionally Davis noted that there are separate well and septic systems serving each building independently. Larsen asked if the tree farm would be split between the two requested parcels. Davis stated it would, with 1500 pine trees above, and 3500 below. Larsen asked if the plan would be to convert the lodge to a residence prior to selling or if the purchaser would be responsible for the conversion; Conrad stated it would likely be the purchaser.

Don Moen asked what the A3 zoning designation allowed property owners to do; they are allowed one animal unit per acre, no commercial activities would be allowed. The 35 acres the lodge would be located on would be zoned A1 and not commercial, and commercial activities would therefore not be allowed on the property without a CUP. There is not a current CUP in place for the property.

Matt Dregne stated that with respect to a residential dwelling on a parcel in an A1 zoning district, the zoning ordinance states, under 17.06 (2) Permitted Uses: "C. One residential dwelling unit for resident owner or resident worker who is engaged in the principle permitted use." Dregne believes in the past "engaging in use" has meant either owner OR resident owner, and that is how it has been applied. The language needs clarification. Conrad believes the tree farm operation on the property would get to that end. Dregne stated that it is the Plan Commission's understanding that the property owner can reside on the property without engaging in farming.

Rich Templeton stated that in his opinion, splitting land creates more people, and more headaches. He has seen it happen in his area of the Town and doesn't think that splitting parcels is what the Town should be doing. The Davis' fought to get what they have now and now they want to split it up. It is not his business why they want to split it up, but the reason doesn't make a difference. Templeton has seen numerous occasions when someone has gotten something accomplished and later wants changes made. He feels it does not pay to keep splitting land and bringing in more residents; residents cost money, and don't bring in money.

Davis stated that he believes Templeton is talking about separating ag land with an existing house; the parcel in question is nothing but creek and wetlands and the buildings are existing. He feels the split will increase the tax base within the Town.

Francis asked Building Inspector Bob Fahey if there was enough setback along the proposed lot lines; Fahey stated there was.

Public hearing closed at 7:23 p.m.

Conrad explained that the land is compatible with surrounding land use, as the surrounding acreage is crop land and the area under consideration is wetland. No natural features will be disturbed or destroyed, as the buildings already exist; if establishment of the footprint of the existing "flat area" is requested to ensure nothing further is disturbed that is agreeable. The land is not good for farming and no cropping will be conducted.

Doug Lee stated that with regard to “disturbing and destroying”, Davis’ had an issue with wetland and the creek involving the DNR, has it been resolved? Conrad stated that it is an ongoing issue that they are in the process of resolving with the DNR. Lee thought that during discussions with the applicants when the concept of the split was brought up, the Plan Commission stated that they would not agree to another house on the property. Larsen recalled the discussion and understood it to mean that there would be no new houses. He felt the real issue is if the lodge is not converted and instead a new home is built. Another concern of Larsen’s is changing the dynamics of the lodge, such as adding on to it. Dregne noted that if the request was approved, the land owner could do whatever they wanted with the building and land as long as it meets the zoning code, building code, etc.

Larsen noted that he assumed the last question on the checklist was answered incorrectly, as it was checked “no” and a “yes” answer makes more sense. (Section V (D): Will the current transportation corridors handle the amount of traffic the development will generate at 9.5 trips per day per house?). Agreed by all it should be “yes.”

Exum recommended reviewing the four findings the Commission needs to make under the farmland preservation program:

1. The rezoned land is better suited for a use not allowed in the farmland preservation zoning district.

A3 zoning is still ag, and the finding suggests that the parcel being reviewed is being changed to something other than ag zoning. Wade Thompson explained that land should be zoned for its use, and this finding is trying to tie actual land use with the applicable zoning designation. Larsen stated that in the past, when an A1 parcel had its house and no buildings separated off, it essentially became a residential parcel but was zoned A3; is Thompson stating that such splits should be zoned RR instead to reflect their actual use? Thompson state that a possible option would be changing the zoning code an designations to better fit actual uses, i.e. “RR large lots” zoning designation to cover 3-5 acre lots that are currently zoned A3.

Larsen noted that there are currently sheep, tree farm, and room for other animals such as pheasants on the parcels. Therefore, there is definitely agricultural activity on both parcels which is a use well suited for the farmland preservation district.

2. The rezoning is consistent with any applicable comprehensive plan.

Larsen noted that the parcel is in the farmland preservation district as outlined in the comp plan, and wonders if A3 zoning is consistent with the farmland preservation district goals. Exum noted the “land will not cut up a field” statement in the comp plan, and felt that the request is taking the one useable portion, or field, within the parcel and splitting it in half. Dave Pestor believes the request meets the requirements of the Comp Plan as it is written today; he realizes that there are changes that the Commission would like to make to the Plan but they have not been made yet and cannot be considered when reviewing this request. Lee thinks there should be a moratorium on any further land divisions until policy decisions and Comp Plan changes have been made. Dregne stated that the legal issue is does the Comp Plan speak to changing zoning in the farmland preservation district, and if not, a narrative is needed discussing what farmland preservation districts really mean outside of just an area on a map.

3. The rezoning is substantially consistent with the county certified farmland preservation plan.

Thompson stated that the County's plan was certified prior to the development of the Town's Comp Plan, and State statutes state that everything has to be compatible with the Town Comp Plans. Therefore, the County is in the process of recertifying their Comp Plan to be consistent with the municipalities' Comp Plans. In the County's eyes, the Town is consistent with the County plan.

4. The rezoning will not substantially impair or limit current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.

It was agreed it would not.

Dregne reiterated that from a legal and policy standpoint, it is important that the issue of farmland preservation district description be addressed. Under Wisconsin law, in order to adopt a zoning change the decision must be consistent with the Comp Plan. Therefore, if the request before the Commission was approved, the Commission would be finding that a rezone of land in the farmland preservation district to A3 is consistent with the Comp Plan. Nothing in the current Comp Plan narrative gives much direction on such decisions, outside of the map. Francis interprets the Plan and map to mean that as long as the zoning is not residential, it is acceptable. Pestor agrees with that interpretation. Exum stated that the issue is creating residences. Dregne stated that while the Commission is not bound by their decisions forever, they will be looked at by future requestors. Larsen agrees that new policies need to be developed, but now the Commission needs to look at what is on the books at this point. There is clear ag use for both parcels, which is not always the case for the A3/A1 splits the Commission has approved in the past.

Francis asked the Davis' if they are clear that a conversion fee will apply to the 8 acres rezoned to A3; they understand.

Larsen asked if the Commission were to approve the request, could they do anything to restrict the existing building (lodge) and the building of any future buildings on the lot. Dregne stated that the use of a deed restriction could be considered, as the applicants are requesting a change in zoning. However, the area of the parcel which would require the deed restriction is not changing zoning, which complicates the issue. The applicants did state that they were willing to record a deed restriction. Larsen noted that if property owners decided to leave the lodge as it is and build a home on the parcel, given the topography, there would be challenges in locating a house.

Dregne explained that action should be taken separately on the zoning change and land division, and the Commission must act on the zoning change first as a motion on the change must pass before the land division can occur. Dregne outlined the motion, which would be to recommend to the Board approving the zoning change of the 8 acre parcel to A3. Any deed restriction should be done in conjunction with the zoning change. Zweizig stated that the Commission had talked previously about a deed restriction for no further development; however, 35 acres is the minimum size for A1 therefore a request for zoning change would need to come before the Commission for any further divisions to occur.

Motion to recommend to the Town Board approving the request made by Tom Davis to rezone 8 acres including existing residence of the existing 43.89 acre parcel located at 10608 N. East Union Rd. in the SE ¼ of section 1, NE ¼ of Section 12, parcel #6-20-94.001 to A3 made by Eric Larsen. Second by Doug Zweizig.

Roll call: Alvin Francis – Yes; Doug Zweizig – Yes; Renee Exum – No; Eric Larsen – Yes; Dave Pestor – Yes; Doug Lee – No. Motion carried 4-2.

Motion to recommend to the Town Board approving the request made by Tom Davis to separate off 8 acres including existing residence from the existing 43.89 acre parcel located at 10608 N. East Union Rd. in the SE ¼ of section 1, NE ¼ of Section 12, parcel #6-20-94.001 made by Eric Larsen. Second by Dave Pestor.

It was noted that there are no conditions attached at this time to either motion made.

Roll call: Alvin Francis – Yes; Doug Zweizig – Yes; Renee Exum – No; Eric Larsen – Yes; Dave Pestor – Yes; Doug Lee – No. Motion carried 4-2.

Discussion: Revised Farmland Preservation Tax Credit program

Thompson explained that an area could be zoned A1 now, and on the future land use map shown as “development”, but still eligible for tax credits and subject to conversion fee. There are other criteria beside A1 zoning that determines tax credit eligibility; but all land zoned A1 is subject to conversion fees. Lee asked what restrictions are put on a land owner or land if a farm is put into the program; Thompson felt this would be better answered by Tom Sweeney of the Land Conservation Department. Lee feels that the State has put an excessive burden on the Town by requiring the collection of conversion fees at the local level and restricting the use of local conversion fees to farmland preservation programs. There is no way to cover the Town’s administrative fees. Thompson clarified that the Town can impose a local conversion fee and it can be used for “costs related to farmland preservation...” per State statute 91.49. Thompson believes the language allows for the use of the fees for administration of the State conversion fees.

Francis noted that he received a mailing from the DeLong Company indicating that they would assist farmers in developing nutrient management plans, which gives the impression that all land in the program would be required to have a nutrient management plan. Lee has heard concerns from farmers that participation in the plan would allow people to enter their land at any time; Thompson stated that was not accurate for the current program.

George Franklin expressed frustration regarding the system of local municipalities collecting conversion fees for the State, and felt that the State should collect the fees themselves. He questioned what would happen if the Town did not receive the fees. The receipt of funds needs to be part of the Town’s zoning change approval process. Dregne felt it should be part of the Town’s zoning ordinance, with the appropriate State statute referenced. Clerk Ylvisaker suggested collecting the funds up front when application fees are paid, as the amount of conversion fees could be calculated by the Treasurer. If the zoning change was not approved the conversion fees could be refunded. The question of refunding local conversion fees came up; Don Krajeck suggested raising the initial application fee for A1 zoning changes to cover the additional administrative costs and eliminating the need for local conversion fees and the refund issue.

Motion to recommend to the Town Board increasing application fees for A1 zoning changes by \$100 to cover increased administrative costs due to the State conversion fee requirement made by Eric Larsen. Second by Doug Zweizig.

Larsen noted that the cost on the part of the Town should not be tied to the number of acres rezoned, as the administrative time involved is the same for every application.

Motion carried by unanimous voice vote.

Exum would like to establish a local conversion fee amount for administering farmland preservation programs. Dregne asked if DATCP can ask the Town for records of how the money is used; Thomson believes they could but it would be unlikely. Dregne suggests that if the Town were to impose a local conversion fee it should be clearly explained how the amount was arrived at and how it ties into farmland preservation programs. Zweizig suggested that it could be used for a purchase of development rights program, even if such a program is not in place at this time it could be in the future. Additionally, Zweizig thinks the fee should be substantial, perhaps half of what the State charge is, to discourage moving land out of A1 zoning. Thompson noted that once the land is certified and zoned A1, it is subject to conversion fee; the recertification process allows the Town to do wholesale rezoning without imposing conversion fees.

Francis would like to see the automatic provision allowing a new residence on an A1 parcel removed and make it a conditional use permit. Larsen suggested this could be accomplished by establishing a ratio that would make it impossible to separate a parcel off.

Thompson needs a formal letter from the Town requesting the County perform base farm tract mapping. Having a map upfront is a good research tool, and Thompson suggested creating a draft base farm map and if the Town decided to change any A1 parcels they would have the map to reference, could make zoning changes, and then produce a final map at end. There would be a contract and cost involved.

Motion to recommend the Town Board request a proposal and/or contract to provide assistance in the recertification process for A1 rezoning from the County made by Eric Larsen. Second by Renee Exum. Motion carried by unanimous voice vote.

Motion made by Renee Exum to recommend to the Town Board to charge an additional fee to the State conversion fee for Town costs related to farmland preservation planning, zoning or compliance monitoring, including Town-developed farmland preservation programs. The amount of the additional fee shall be 50% of the State conversion fee that is applied to rezoning land out of an A-1 district. Second by Eric Larsen. Motion carried by unanimous voice vote.

Motion to recommend to the Town Board adoption of a one year moratorium on any further land divisions, zoning changes and related conditional use permits throughout the entire Town to allow the Town time to review and address policy, Comprehensive Plan, and ordinance issues made by Doug Lee. Second by Eric Larsen.

Amend motion to request that legal counsel draft such ordinance for review at the August Plan Commission meeting made by Doug Lee. Second by Eric Larsen.

Motion as amended carried by unanimous voice vote.

Review and possible recommendation to Town Board changes to ordinances including citation ordinance and related fee schedules.

Meeting adjourned at 10:15 p.m.

Respectfully submitted by Clerk Regina Ylvisaker.

Note: minutes are considered draft until reviewed and approved by the Plan Commission at a properly noticed meeting.